

EXHIBIT 1

United States District Court
Western District of Washington

CLYDE RAYMOND SPENCER

Petitioner,

vs.

JOSEPH KLAUSER, Warder, Idaho State
Institution,

Respondent.

Case No.

C94-5238 RJB

DEPOSITION OF JAMES MATTHEW PETERS

July 30, 1996

Reported by
Jodi C. Williams

ORIGINAL

**PLAINTIFF'S
EXHIBIT**

THE COURT REPORTERS
TUCKER
AND ASSOCIATES

208-345-3704 • 1-800-424-2354

Fax 208-345-3713

605 WEST FORT STREET

P.O. BOX 1625 • BOISE, ID 83701

Home Page: <http://www.webfactor.com/tucker/>

E-Mail: tucker@rmcl.net

DEPOSITION OF JAMES MATTHEW PETERS, taken at the instance of the petitioner, at the United States Attorney's Office, 877 West Main Street, First Interstate Center, Suite 201, in the City of Boise, State of Idaho, commencing at 9:30 a.m., on Tuesday, July 30, 1996, before Jodi C. Williams, Court Reporter and a Notary Public in and for the State of Idaho, pursuant to notice, and in accordance with the Federal Rules of Civil Procedure.

APPEARANCES

For Petitioner

MAIR CAMIEL & KOVACH, P.S.
by PETER A. CAMIEL
710 Cherry Street
Seattle, Washington 98104

For Respondent

UNITED STATES ATTORNEY'S OFFICE
CORRECTIONS DIVISION
by DONNA MULLEN
Assistant Attorney General
Post Office Box 40116
2411 Chandler Court
Olympia, Washington 98504-0116

1 A. Because of the sensitive nature of the
2 case as the consequence of Mr. Spencer's position
3 in the police department.

4 At the time, I was responsible for
5 reviewing and making final decisions in all child
6 sexual abuse and rape cases. And in the Clark
7 County prosecutor's office and in the routine
8 average case, that was not a problem.

9 Sensitive cases or cases that were close
10 calls, I would review it and refer the case to Art
11 Curtis, who was the elected prosecutor.

12 And in my view, that case, as initially
13 presented, was not provable. But I didn't want to
14 make that call myself because Mr. Spencer was a
15 policeman. And I didn't want to be accused of
16 favoritism or have someone suspect that he got
17 better treatment because he was a police officer.

18 And so we referred it to an outside
19 agency who didn't know Mr. Spencer. I knew
20 Mr. Spencer. But someone who was completely
21 independent and asked them make an independent
22 judgment.

23 Q. Do you know what materials were forwarded
24 to the King County prosecuting attorney?

25 A. I assume everything we had.

1 Q. What was the result of the King County
2 prosecutor's review of the case?

3 A. Now, you have to understand that the case
4 was reviewed only when we had one victim, a female,
5 five-year-old victim.

6 Q. Yes.

7 A. The status of the case changed later when
8 two other children came forward with allegations.

9 But at the time, they concurred with me
10 that the case wasn't provable. And we declined it
11 as a result of that.

12 Q. Why did you believe the case wasn't
13 provable?

14 A. I don't remember the specifics. That's
15 12 years ago. I don't remember the specifics of
16 why not.

17 But at the time and to this day, I go
18 through a three-step analysis with every criminal
19 case. And that is, first, to determine whether it
20 appears that a crime was committed. And, secondly,
21 whether I can prove it beyond a reasonable doubt.
22 And, third, whether there is some reasonable way
23 short of bringing the power of the government down
24 on somebody to resolve the matter, such as pretrial
25 diversion or civil compromise or something short of

1 I remember one dramatically. It was a
2 doctor from Kaiser who had taken a photograph of a
3 gaping rectum of a girl who was about eight who had
4 been subjected to chronic penetration with a
5 foreign object by her mother and brother. And I
6 remember that one clearly because the photo was so
7 dramatic.

8 No others immediately jump out.

9 Q. Focussing your attention on the Spencer
10 case, do you recall the types of allegations that
11 the female victim, Kathryn Spencer, was making?

12 A. No.

13 Q. Do you recall the types of sexual abuse
14 that she was alleging?

15 A. No.

16 Q. Were you ever involved in an interview
17 with her?

18 A. I believe I was in the presence of a
19 defense attorney in Sacramento.

20 Q. You indicated earlier that when the only
21 victim was Kathryn Spencer, upon your initial
22 review of the case, you believed the case wasn't
23 provable. Do you recall why you thought that?

24 A. No. Probably the absence of
25 corroboration or -- I just don't remember. If I

1 Q. DeAnne?

2 A. I met them both.

3 Q. It was DeAnne?

4 A. Yes.

5 Q. Did you ever interview Matt Hansen?

6 A. I don't think so. It was never my
7 practice, nor is it my practice now, to get
8 involved in interviews with child molesting victims
9 unless I'm certain the case is going to go to
10 trial. I think they have to tell their story to
11 too many grown-ups that they don't know without
12 having to meet another grown-up and tell the ugly
13 details to them.

14 So I don't have any memory of doing that,
15 and it wouldn't have been my practice to do that.

16 Now, if I had, there would be detailed
17 notes because I always took notes. And there would
18 be notes in the file. So I'm not saying I didn't,
19 but I don't think I did.

20 That case was heading toward trial. But
21 I usually didn't get involved with actually
22 preparing the child for trial until a couple of
23 weeks before when I was sure it was going to go.

24 I might have met them. And, in fact, my
25 practice would have been to meet the child, take

EXHIBIT 2

1 JAMES M. PETERS, PETITIONER'S WITNESS, SWORN OR AFFIRMED
2 DIRECT EXAMINATION

3 BY MR. CAMIEL:

4 Q. Would you state your full name and spell your last name,
5 please.

6 A. My name is James Matthew Peters. P-e-t-e-r-s.

7 Q. And your professional address?

8 A. Box 32, Boise, Idaho.

9 Q. Mr. Peters, how are you currently employed?

10 A. I'm an assistant United States attorney in the District of
11 Idaho.

12 Q. Were you previously employed as a deputy prosecuting
13 attorney in Clark County?

14 A. Yes, I was.

15 Q. And were you the primary deputy prosecuting attorney in the
16 case involving Mr. Spencer?

17 A. That's true.

18 Q. Mr. Peters, do you recall when charges were initially filed
19 against Mr. Spencer?

20 A. No, I do not.

21 Q. Do you recall the fact that there was more than one
22 information filed against Mr. Spencer?

23 A. Yes.

24 Q. It was amended on occasion.

25 A. I do recall that.



1 the request of the attorney general for an item. So if that's
2 review, then, yes.

3 Q. All right. And was the item that you were looking for the
4 medical examination report pertaining to Kathryn Spencer?

5 A. That's right.

6 Q. Do you recall now whether or not back when you were handling
7 the Spencer case you were aware of the fact that Kathryn Spencer
8 had been seen by a physician down in California for a sexual
9 abuse examination?

10 A. I do not recall that.

11 Q. You don't recall whether you knew that at the time?

12 A. I don't believe I -- I don't have any recollection that she
13 had seen a physician, but I don't have many recollections about
14 this case because it was so long ago and there have been so many
15 cases since then.

16 Q. When you went to review the Clark County Prosecutor's file
17 to see if there was this medical examination report within the
18 Clark County Prosecutor file, had you at that point in time
19 received a copy of the report so that you knew what to look for?

20 A. No.

21 Q. If you could turn to Exhibit 1 in the notebook.

22 That's the medical examination report I've asked you about.
23 Have you seen this report recently?

24 A. Yes.

25 Q. When you reviewed the prosecutor's file in the last several

1 weeks or few months, did you see this report anywhere in the
2 prosecutor's file?

3 A. No, it wasn't there.

4 Q. Did you review the Clark County Sheriff's office files while
5 you were at the -- about the time you were in the prosecutor's
6 files?

7 A. Yes, sir, I did.

8 Q. And did you find this report in the sheriff's office files?

9 A. Yes.

10 Q. If you could turn to Exhibit No. 12 in the book.

11 Did you find attached to the medical report, Exhibit No. 12,
12 Sharon Krause's utility report?

13 A. I don't recall. I wasn't looking for a utility report.

14 Q. Turn your attention back to late 1984 and 1985 at the Clark
15 County Prosecutor's office. I want to ask you about how
16 discovery was handled in criminal cases. Once charges were
17 filed against an individual and a person was arraigned, what was
18 the practice at that time with regard to discovery?

19 A. We had an open file system at that time. Defense attorneys
20 came in, and in lieu of making a formal discovery motion to the
21 court, they signed a waiver form where they agreed not to copy
22 or otherwise disseminate any of the information that they
23 received from us. It was voluntary discovery, and if they would
24 agree to do that, and to my knowledge they always did, we just
25 gave them complete open access, and as a consequence, they got

1 MR. CAMIEL: I don't have that. I don't know if the
2 attorney general has it.

3 MR. SAMSON: We will attempt to find it, Your Honor.

4 THE COURT: If you have it, I would like to see it, and
5 maybe Mr. Peters would.

6 Q. (By Mr. Camiel) Mr. Peters, during the pendency of the
7 Spencer case, did you involve yourself in the interviews of any
8 of the three victims?

9 A. I recall being present at interviews of two of the children
10 in Sacramento, California. Those were the defense attorney's
11 interviews. As to whether I interviewed the Hansen boy, I don't
12 have independent recollection. If I had, I would have taken
13 notes, and those notes would be in the file.

14 I specifically recall going to Sacramento because that's the
15 only time I ever did that in the eleven years I was in the
16 prosecutor's office, and so that stands out in my mind.

17 Q. All right.

18 MR. CAMIEL: Your Honor, the attorney general's office
19 has found what appears to be a copy of the omnibus application
20 that was entered in court and signed by the judge. I haven't
21 marked it as an exhibit yet, but I would like to do that after
22 we make copies of it.

23 THE COURT: You don't mind if I look at this?

24 MR. CAMIEL: Not at all.

25 MR. SAMSON: We would have no objection to its

EXHIBIT 3

☐ Incident Rpt. ☐ Supplemental Rpt.

TYPED BY: S. Krause

PROCESSED BY:

DATA ENTRY BY:

NT CLASSIFICATION (INCLUDE R.C.W. NO.)

Recent Liberties/Statutory Rape 1st Degree

1 OF INCIDENT

81 N.E. Lucia Falls Rd., Yacolt, Wash.

DATE OF INCIDENT

Summer of 1984

PRESENT DATE

10-12-84

ADDITIONAL PERSONS INFO - ATTACH ADDITIONAL INCIDENT REPORTS. DETAIL ADDITIONAL PERSON INFORMATION NOT COVERED IN BOXES

ADDITIONAL SUSPECT INFO - ATTACH ADDITIONAL INCIDENT REPORTS, DETAIL, ADD.

ADDITIONAL SUSPECT INFO - ATTACH ADDITIONAL
ADDITIONAL SUSPECT INFORMATION NOT COVERED IN BOXES

INJURED PERSONS - (VICTIMS, WITNESSES, OFFICERS, SUSPECTS) - DETAIL INJURIES, MEDICAL

ADDITIONAL PROPERTY - ATTACH WITH ITX PROPERTY REPORT. DETAIL INFORMATION NOT

ADDITIONAL PROPERTY - ATTACH UTILITY/PROPERTY REPORT. DETAIL INFORMATION NOT
CLUDED IN BOXED PROPERTY SECTION

8. PHYSICAL EVIDENCE - DETAIL WHAT AND WHERE FOUND, BY WHOM, AND DISPOSITION

6. VEHICLES - SUSPECT VEHICLE INFORMATION IN SAME ORDER AS VEHICLE SECTION. ADDITIONAL VEHICLE INFORMATION NOT INCLUDED IN BOXES

7. PARENT, GUARDIAN'S NAME, ADDRESS, PHONE NUMBER

INDICATE IF CONTACTED AND IF INCIDENT ADJUSTED

8. LIST DOCUMENTS ATTACHED - (AIR FORM MEDICAL I
9. RECONSTRUCT INCIDENT AND DESCRIBE INVESTIGATION

10. SYNOPSIS FOR PROSECUTOR ON CLEARED CRIMES AND

10. SYNOPSIS FOR PROSECUTOR ON CLEARED CRIMES AND CUSTODIES

1 NO. ARE LISTED IN ORDER OF STEP 1 TO 10. IF STEP IS UNNECESSARY, OMIT.

CASE NO.
84-8506

☐ CPS ☐ CMHP ☐ DSHS
☐ JOH ☐ PAT ☐ BIU
☐ ARREST ☐ EXCEPTIONAL

☐ ARREST ☐ EXCEPTIONAL

☐ PATROL
☒ DETECTIVE
☐ UNFOUNDED

REPORTING OFFICER:

Sharon A. Krause K/43 Detectives

DLST.

REVIEWED BY:

DA

**PLAINTIFF'S
EXHIBIT**

Ch

USE PATIENT PLATE

UNIVERSITY OF CALIFORNIA DAVIS
MEDICAL CENTER
SACRAMENTOTHERAPEUTIC/DIAGNOSTIC
PROCEDURES REPORT

032 084 97 17 4 3R

SPENCER, KATHRYN E.

F 01 13 70 EXP 10 84

762 / PED. ACC.

30 AUG 84

08 30 04

All cases of Suspected Child Abuse Neglect are to be reported by telephone and in writing (by submitting this form) to the designated agencies (C and D below) within 36 hours. (Penal Code Section 11161.5 and 11161.7)

GENERAL INFORMATION

Patient's Name

Unit#

Spencer Kathryn

Address

City

State

Phone

3930 Bechria Sacramento CA 482-6057

Age Birthdate Race Sex Date, Time of Examination Place of Examination

5 1-13-79 C F 8-30-84 Peds Acute 1:30

Reporting Party's Name

UCD Department

Phone

Kathryn Ellis-Magee, M.D. Family Practice 453-3630

FAMILY—Parents:

Name (Last, First, Middle) Birthdate Sex Race Name (Last, First, Middle) Birthdate Sex Race

Spencer DeAnne F C Clyde Ray Spencer M C

Address

Address

3930 Bechria

Vincennes

Home Phone

Business Phone

Home Phone

Business Phone

() () () ()

Siblings:

Name Birthdate Sex Race Name Birthdate Sex Race

1. Matthew 8yr M C 4. _____

2. _____ 5. _____

3. _____ 6. _____

Child's Family/Home Environment—Include risk factors in parent and/or child. Specify who is/are caretaker(s).

Katie lives with mother and sibling. Parents divorced. Father has visitation for six weeks in summer, week at Easter and two at Christmas every other year.

Previous reports of abuse of child or in family? ☐ Yes ☒ No If yes, describe when, who involved, etc.

Print Last Name

Signature

Date of Report

Ellis-Magee

K. Ellis-Magee

8/30/84

UNIVERSITY OF CALIFORNIA DAVIS
MEDICAL CENTER
SACRAMENTO

762 / PED ACC

032 084 97 17 4 3R

SP: TEL. ATHRYN E.

F 1 12 70 EXP 10 84

4 PG 482 0957

08 30 06

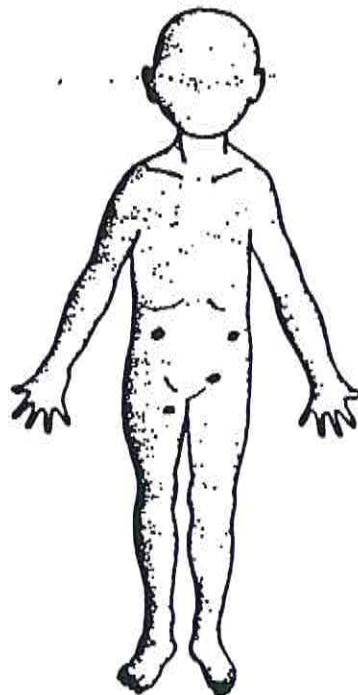
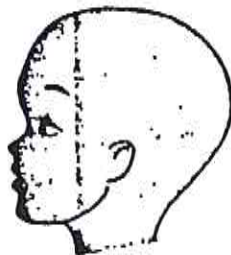
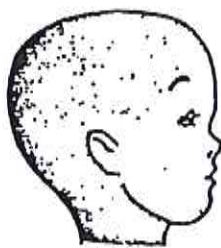
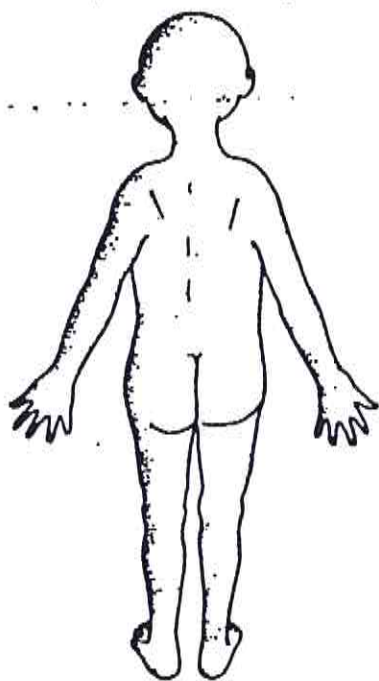
THERAPEUTIC/DIAGNOSTIC
PROCEDURES REPORT13:23
PHYSICAL EXAMINATION

Patient's General Appearance:

White female child occurring in her
mother's lap.Ht 110.5 cm 25th %ileWt 17.0 kg 15th %ile

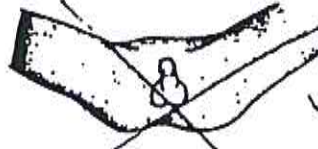
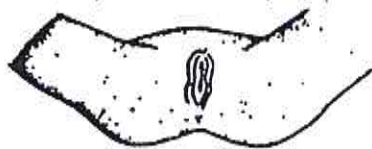
Hc _____ cm _____ %ile

Locate and describe in detail any injuries or findings related to maltreatment. Indicate location of lesions/findings; shade for bruises or burns. Beside each injury indicated note color, size, pattern, texture, and sensation. Note if recognizable imprint or bruise goes around curve.

4 erythema
bug bites

A pelvic examination should not be performed unless the parent, guardian or minor consent or unless necessary as part of treatment. See Department of Health Regulations Title 22, Division 2, Victims of Sexual Assault.

Pelvic
No erythema
tymen intact
no lacerations
No swelling



FINDINGS: Pelvic within normal limits.

Fundoscopic Examination—☐ Normal ☐ Abnormal ☒ Not doneDevelopment Assessment—☒ Normal ☐ Questionable ☐ Abnormal, by ☐ DDST ☐ Estimate ☐ OtherBehavioral Assessment—☐ Normal during visit ☒ Abnormal during visit (Specify) refused to speak/scanX-ray bone survey—☐ Normal ☒ Not done ☐ Abnormal (findings) through examHemostasis tests performed—☐ PT ☐ PTT ☐ Platelets ☒ None ☐ Other _____ Results _____Cultures for gonorrhea performed—☒ genitalia ☒ throat ☒ anus. VDRL—☐ Done ☒ Not doneMenarche age _____ Periods regular? ☐ Yes ☐ No L.M.P. _____Pregnancy test—☐ Positive ☐ Negative ☒ Not performed

Signature

Print Last Name

Date of Report

Ellis-Mance

Ellis-Mance

8/30/84

UNIVERSITY OF CALIFORNIA DAVIS
MEDICAL CENTER
SACRAMENTOTHERAPEUTIC/DIAGNOSTIC
PROCEDURES REPORT032 084 97 17 4 3R
SPENCE, KATHRYN E.
F 01 13 76 EXP 10 84
4 PG 482 6057

762 / PED ACC

08 30 06

MALTREATMENT HISTORY

Give history of event(s) including time, date, place, perpetrator, circumstance, people present, etc. Underline name of person giving each version, e.g., Father said ... Child said ... Officer said ...Mother said

Children were visiting father's bunk during Summer. Returned to mother on 8-26. Step mother reported to Van Couverter police that the father had molested. Report was based on remarks Katie had made to step mother on 8-24-84. Katie refused to talk or answer questions during exam. She has refused to talk with mother regarding report.

Diagnostic Conclusion(s):

Child's story consistent with history of molestation.
No physical findings.

MANAGEMENT

1. Reported to: Officer	ID No.	Department	Phone
Pat Fkub		Sheriff	440-5191
Dependent Intake or CPS Worker		Department	Phone
		OS	366-2386

2. Medical Follow-up: Date _____ Time _____

☒ Scan F/U Clinic ☐ P.M.D. (Name) 9-29-84

☐ UCD Clinic (Name) _____ ☐ Other _____

☐ None (Why not?) _____

3. Mental Health Follow-up: Date _____ Time _____

☒ Referred to Victim Witness

☐ None _____

4. Disposition:

Police Hold? ☐ Yes ☒ No

☐ Receiving Home ☐ Foster home ☐ Relative's home ☒ Parent's home ☐ Other

☐ Hospitalized

5. Other Treatment:

Print Last Name

Signature

Date of Report

Eells-Magee

K. Eells-Magee

8/30/84

SUSPECTED CHILD ABUSE

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAYMOND SPENCER,
Petitioner,
vs.
JOSEPH KLAUSER, Warden, Idaho
State Institution; CHRISTINE
GREGOIRE, Attorney General,
State of Washington,
Respondents.

No. C94-5238RJB

COPY

DEPOSITION UPON ORAL EXAMINATION
OF
SHARON A. KRAUSE

DATE TAKEN: May 22, 1996

TIME: 10:30 a.m.

PLACE: Hall of Justice
Longview, Washington

SUZAN R. WELLS
Archer Associates, Inc.
P. O. Box 1092
Longview, Washington 98632
(360) 423-2195

PLAINTIFF'S
EXHIBIT
4

1 magnifying during an exam of a child, anal or
2 vaginally. It's my understanding that if there are
3 lesions or there's been tearing and healing, it may be
4 detected with a colposcope and it wouldn't by the naked
5 eye.

6 Q Have you been involved in cases before where the
7 prosecution has presented photographs that were taken
8 with colposcopic exam?

9 A Well, I'm usually excluded from the courtroom when
10 that's going on, but I'm sure -- I know there's been
11 cases I've been involved in where that was utilized by
12 the physicians.

13 Q Have you reviewed with physicians as a part of some of
14 your investigations photographs depicting physical
15 evidence of sex abuse through colposcopic exam?

16 A I don't know that I've ever sat down with a physician
17 and done that. But I've seen photographs in training.

18 Q Now, the report Exhibit No. 1 that you have in front of
19 you, do you know whether or not this report was ever
20 forwarded to the Clark County prosecutor's office?

21 A Like I explained, I'm told it wasn't in their file. If
22 they have all the other reports, I can't imagine them
23 not having this one. Also, based on Jim Peters and
24 knowing him and knowing how meticulous he is and knowing
25 historically what I would do, there is no doubt in my

1 mind if they didn't have a copy, he was aware of it when
2 I got it. We talked.

3 If CAIC -- If I have a prosecutor on a case, he may
4 not have the whole case file or I may still have some
5 reports I haven't shipped up to him, but there would be
6 no doubt in my -- 99 percent sure that he had this
7 information. I can't imagine him not having the report
8 if he had all the rest of the reports. And I'm told
9 that it was in Vancouver Police internal investigation
10 file that they did. So why would I send it to him and
11 not the prosecutor? That doesn't make sense.

12 Q Do you know how it was that Vancouver Police Department
13 received your reports, your investigative reports in the
14 Spencer case?

15 A Not really. I don't remember -- I know that they were
16 doing an investigation. My mind just went blank. Jim
17 Holtz with Vancouver Police worked on it. I spoke to
18 him. I think he may have done some interviews. It
19 seems like there were other people. I don't remember if
20 they got them from the prosecutor or they got them from
21 me or they got them from records. I don't know.

22 Q Now, you indicated that you spoke I guess recently with
23 Kim Farr, deputy prosecuting attorney. And as I
24 understand it, Kim Farr indicated that a review had been
25 done of the prosecutor's files and they didn't have the

EXHIBIT 5

NICKA

Q MEDS

UC

16/85

Rm 5

Dr. Gatz

5yo

Get below

Height 43 1/2 Wt. 43 pds

Temp BP.

Head Chest

General Playing - coloring book -

Skin touch to legs to self strong

Eyes cooperative to exam

ENT

Chest

Heart

Abdomen

Extremities

CNS

Well Exam

S/ New for physical exam to R/o injury that may have been sustained 20 child sexual abuse by stepfather - recently disclosed. Father & 2 other children (by another woman) were aggressively sexually molested over period of ~ 1-3 yrs.

Seeing outside counselor / who have mother described anal, digital and oral sexual manipulation by stepfather - the last time ~ 3 wks ago. He had no obvious physical YOs & in last visit - the 1. the mother had to be sensitive least to

PLAINTIFF'S
EXHIBIT

5

10

KAISER
PERMANENTE
MEDICAL CARE PROGRAM

DATE	LOCATION	STATION	SERVICE CODE
NAME			
HEALTH RECORD NO.		D.O.B.	
GROUP NO.		MEDICARE CLASS	
BENEFIT ARRAY			

(cont)

self more & not interested in doing usual things & just seemed generally ill x few days.

Main concern now is if any physical injury has been done -

See R & No evidence for any physical injury presently.

VC

FEB 25 1986

KA - G

meds -

Rm 5

CLINIC (SB) CASE: 6410

T-99.8

H. Nycturia Pa c/c cough, (R) ear pain, swollen glands (R) & (L) sides of neck cough & ST x 3-4 days Ear Pa x 1 day

c/o Pa alone

Px. ENT. (R) TM is intact & very red Throat is clear

(R) anterior & posterior cervical adenitis

Livingston Clinic to PEP

Inj. ROM

Px. Amox 250 mg / 5 ml 15 TID 150 mg

Clind 300 mg / 5 ml 3-4 TID pr

Rec'd 10-11 days

Gdy Genderson

(20)

**KAISER
FOUNDATION**

4104 27 43

1959-025

W#694-2494
h#254-5498

CHART

M 69 REV 11 831 CHARTED BY
 10 111500 90 11215

NO. 67 REV 7 84, CHARTER: BY

CHART FINAL

CHART FINAL

CHARIT FILIAL

EXHIBIT 6

July 25, 1996

1
2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

5 CLYDE RAYMOND SPENCER,)
6 Petitioner,)
7)
8 v.) No. C94-5238 RJB
9 JOSEPH KLAUSER, Warden, Idaho)
10 State Institution; CHRISTINE)
11 GREGOIRE, Attorney General,)
12 State of Washington,)
13 Respondents.)

14 DEPOSITION OF MICHAEL DAVIDSON
15
16
17
18
19
20
21
22
23
24
25

Page 1

1
2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

5 CLYDE RAYMOND SPENCER,)
6 Petitioner,)
7)
8 v.) No. C94-5238 RJB
9 JOSEPH KLAUSER, Warden, Idaho)
10 State Institution; CHRISTINE)
11 GREGOIRE, Attorney General,)
12 State of Washington,)
13 Respondents.)

14 DEPOSITION OF MICHAEL DAVIDSON

15 Taken on behalf of Petitioner

16 July 25, 1996

17 * * * *

18
19
20
21 BE IT REMEMBERED THAT, pursuant to Washington Rules of Civil
22 Procedure, the deposition of Michael Davidson was taken before
23 Kathleen L. Greene, on July 25, 1996, commencing at the hour of
24 10:00 a.m., the proceedings being reported at Attorney
25 General's Office, 500 W 8th Street, Suite 110, Vancouver,
Washington.

FREE WORD INDEXING WITH EVERY TRANSCRIPT

32

Naegeli & Associates, Inc.

Page 2

A P P E A R A N C E S

5 FOR THE PETITIONER: Peter Camiel
6 Attorney at Law
7 Mair, Camiel, & Kovach
8 710 Cherry Street
9 Seattle, WA 98104
10 (206) 624-1551
11
12 FOR THE RESPONDENTS: John L. Samson
13 Attorney at Law
14 Assistant Attorney General
15 P.O. Box 40116
16 Olympia, WA 98504
17 (360) 586-1445

18 Reported by: Kathleen Greene
19
20 * * * * *

Page 3

I N D E X

EXAMINATION BY	PAGE	
Mr. Camiel	7	
Mr. Samson	40	
Mr. Camiel	41	
EXHIBIT	DESCRIPTION	PAGE
01	Report dated 10-12-84	14
02	Index dated 8-30-84	27
03	Index dated 11-8-84	28
04	Office Correspondence dated 9-12-84	31
05	Report dated 3-6-85	35
06	Affidavit of James Matthew Peters	39

PLAINTIFF'S
EXHIBIT

Page 1 - Page 3

Page 20

1 allegation was that an adult male had penile vaginal
2 intercourse with a five-year-old child, in your experience
3 would you expect there to be any medical findings by a
4 doctor?

5 MR. SAMSON: Same objection as before, to
6 the extent it calls for a medical conclusion.

7 A. I would have to -- and we would have normally relied
8 on a doctor's opinion because I couldn't make an objective
9 call on that.

10 Q. Let me change the question a little bit. Based on
11 your experience, if there was an allegation that an adult
12 male had penile vaginal intercourse with a five-year-old
13 child, would the fact that there was an examination conducted
14 and the doctor found no physical evidence, would that be
15 significant to a defendant, based on your experience?

16 A. That's really a difficult hypothetical because we're
17 presupposing that we know the degree of penetration that was
18 made. There's a lot of factors that are involved in that.
19 Penetration can be very, very slight. There might not be
20 evidence, but yet it still could have happened.

21 Q. Understanding that it still could have happened,
22 despite the fact that there's no physical evidence, if a
23 doctor conducts an examination where those are the
24 allegations, do you believe that a defendant would consider
25 it significant if the doctor found nothing abnormal?

Page 21

1 MR. SAMSON: I would object on the grounds
2 that it calls for speculation as to what a defendant would
3 believe. And I would object to the extent it calls for a
4 legal conclusion as to what is material.

5 A. I would have to say the same thing as I did before,
6 again, I can't make that determination because there may be a
7 number of factors that are involved here, besides just the
8 physical evidence.

9 Q. I take it, in your experience as a police officer,
10 you understand what the term discovery means in a criminal
11 case?

12 A. I believe so, yes.

13 Q. And you understand that the prosecuting attorney has
14 discovery obligations?

15 A. Yes.

16 Q. That is, the prosecutor has certain obligations to
17 disclose certain information to the defendant's attorney?

18 A. Yes.

19 Q. And do you understand that one of the prosecutor's
20 obligations is to disclose exculpatory information to the
21 defense attorney?

22 A. I believe I understand that, yes.

23 Q. In your opinion, would a prosecutor be required to
24 disclose this report to a defendant's attorney?

25 33 MR. SAMSON: I would object to the extent

Page 22

1 that it calls for a legal conclusion.

2 A. I would have to rely on the prosecutor's opinion for
3 that, as well, because I don't know whether these would,
4 necessarily, fall within the guidelines of discovery.

5 Q. You think it would be proper for the sheriff's
6 department not to forward this report to the prosecutor?

7 A. The only way that I can see us not forwarding this
8 to the prosecutor would be if the prosecutor didn't feel it
9 was material or if the investigator felt that there was
10 nothing of significance to the prosecutor.

11 Q. How would the prosecutor know whether it was
12 material or not unless they saw the report?

13 A. Conversation with the investigator.

14 Q. In your experience with the Clark County Sheriff's
15 Office, have there been situations where you have had
16 discussions with the deputy prosecutor about a report, and
17 the prosecutor has indicated that you don't need to forward
18 that report to them?

19 A. I certainly can't off the top of my head, although I
20 can think of certain instances where I've done specific
21 things like that. An examination on things that bore out no
22 significant information, they didn't want to see the report.

23 Q. Okay. Can you recall any case where there was a
24 medical examination concerning an alleged sex-crime victim
25 where a prosecutor has indicated they didn't ever want to see

Page 23

1 the report?

2 A. Certainly not that I can recall.

3 Q. You've already referenced two interviews, or
4 attempted interviews, you've had with Ray Spencer. Did you
5 also have contact with Mr. Spencer after he was incarcerated
6 at the Clark County Jail?

7 A. Not to my recollection, no, sir.

8 Q. Do you recall whether you went up to the Clark
9 County Jail, ever, after Mr. Spencer was incarcerated, to
10 visit him?

11 A. No.

12 Q. When you indicate no, are you indicating that you
13 didn't go up there or that you don't recall?

14 A. I'm indicating that I didn't go up there.

15 Q. Did you ever tell anyone that you went up to the
16 Clark County Jail and visited with Ray Spencer?

17 MR. SAMSON: I'm going to have to object,
18 Peter, unless you can show how this is relevant to the issues
19 currently before the District Court. I don't believe it's
20 relevant. The Ninth Circuit has affirmed the denial of a
21 claim regarding force of plea and the alleged visits of
22 Sergeant Davidson at the Clark County Jail. And I don't
23 believe that it's relevant. So unless you can tie it to the
24 issues, I would object on the grounds of relevancy.

25 MR. CAMIEL: For the record, one of Mr.